

**Staff
Summary
Report**

**To: Mayor & City Council
Through: City Manager**

**Agenda Item Number 15
Meeting Date 05/17/2001**

SUBJECT: MISCELLANEOUS

PREPARED BY: STEVE HORSTMAN, ENGINEERING ASSOCIATE (350-8817)

REVIEWED BY: NEIL MANN, DEPUTY PW MANAGER/CITY ENGINEER (350-8250)

BRIEF: Authorize execution of a development agreement with TCC Phoenix, Inc., a Delaware Corporation, allowing the City to install a traffic signal using funds deposited by a developer.

COMMENTS: TRAFFIC SIGNAL MAINT. ADM. (1105-05) Authorize execution of a development agreement with TCC Phoenix, Inc. allowing the City to install a traffic signal at the intersection of Harl Avenue and Warner Road using funds deposited by a developer.

Document Name: (20010517PWDR06) Supporting Documents: Yes

SUMMARY: The City has determined through its signal study criteria that a signal would be installed at the intersection of Harl Avenue and Warner Road in the future when the proposed development on the southwest corner is totally built out. However, the developer is desirous of having a signal installed at this intersection prior to his development being completed. Therefore, in lieu of waiting for the full completion of his development, the developer has elected to fund the entire installation of this signal so as to have it installed now, instead of waiting for the City to install it at a future date. This is agreeable with the City and the developer.

FISCAL NOTE:

The developer will deposit sufficient funding for this work.

RECOMMENDATION:

That the City Council authorize execution of a development agreement with TCC Phoenix, Inc., a Delaware Corporation, and authorize the Mayor to execute any necessary documents.

Approved by Howard C. Hargis, Public Works Manager

TCC PHOENIX, INC.
(A DELAWARE CORPORATION)
DEVELOPMENT AGREEMENT
AGAVE CENTER TRAFFIC SIGNAL
(INTERSECTION OF WARNER ROAD AND HARL AVENUE)

C 2001-_____

This Development Agreement was executed as of the _____ day of _____, 2001, by and between the CITY OF TEMPE, ARIZONA, an Arizona municipal corporation (which, together with any successor, public body or officer hereafter designated by or pursuant to law, is hereinafter referred to as "City"), and TCC PHOENIX, INC., A DELAWARE CORPORATION (hereinafter referred to as "Developer").

RECITALS:

WHEREAS, Developer is desirous of installing a traffic signal at the intersection of Warner Road and Harl Avenue for the Agave Center.

WHEREAS, City is willing to provide a traffic signal at this location if the Developer agrees to pay all associated costs.

NOW, THEREFORE, for the consideration set forth in this agreement, the sufficiency of which is acknowledged by the parties, the City and Developer hereby agree as follows:

1. The City estimates that the cost of completion of the installation of the traffic signal shall be the amount of \$111,130.00, which includes labor, equipment and materials. Within five (5) business days after receipt by the Developer of written notice from the Traffic Engineering Division of the City of the execution of this Agreement by the City, the Developer shall cause the amount of \$111,130.00 (the "Deposit") to be deposited with the City. The Deposit constitutes the maximum amount the Developer will be required to pay for the completion of the installation of the traffic signal.
2. Subject to the receipt of the Deposit, the City shall commence construction of the traffic signal and shall complete the work within 45 calendar days thereafter. The City will diligently prosecute the installation of the traffic signal to completion, subject to events of force majeure (excluding financial inability). The City shall be entitled to disbursement of sums from the Deposit as required to pay for the cost of construction.
3. Any portion of the Deposit remaining upon completion of construction of the traffic signal will be refunded by the City to the Developer within thirty (30) days following completion.

4. The Developer shall have the right to review the records of the City in respect to the appropriateness of charges against the Deposit. The City shall cooperate with the Developer in any dispute that may arise out of such accounting review.
5. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or of the second business day after mailing by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City: City Manager
City of Tempe
31 East Fifth Street
3rd Floor
Tempe, AZ 85281

Copy to: City Attorney
City of Tempe
31 East Fifth Street
Tempe, AZ 85281

To Developer: TCC Phoenix, Inc.,
A Delaware Corporation
2850 E. CAMELBACK RD, SUITE 270
PHX. AZ 85016
ERIC BROWN

Copy to: Trammel Crow Company
Attn.: Eric Brown, Vice President
2850 E. Camelback Road, Suite 270
Phoenix, AZ 85016

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has signed same, on or as of the day and year first above written.

CITY OF TEMPE, ARIZONA, an Arizona municipal corporation

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TCC PHOENIX, INC.
a Delaware Corporation

By: 
Eric Brown

Its: VICE PRESIDENT/DEVELOPMENT
SERVICES